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RECENT AMERICAN DECISIONS.

Supreme Court of Iowa.

McDONALD ET UX. v. THE CHICAGO & N. W. R. R. CO.

The allowance of an amendment to a petition, increasing the amount of damages claimed, was held not erroneous.

There exists a common law duty on the part of railway companies to provide reasonable accommodations at their stations, for passengers who are invited and expected to travel on their roads.

If the station room is full, or if it is intolerably offensive by reason of tobacco smoke, so that a passenger has good reasons for not remaining there, it will justify his endeavor to enter the cars at as early a period as possible, and if in so doing he receives an injury from the unsafe and dangerous condition of the platform or steps, in a place where passengers would naturally go, the company are liable therefor, if the passenger used proper care, and violated no rule or regulation of the company of which he had actual knowledge, or which, as a reasonable man, he would be bound to presume existed.

In an action for damages, by a husband and wife against a railroad company, for permanent injuries received by the wife, the Carlisle tables may be admitted to show the expectancy of the wife's life, when it appears from the evidence that, by reason of such injuries, a servant had been, and probably would have to be, employed to do the work the wife had been accustomed to do.

Section 2771, of the Revision, changes the common law rule, that, in an action wherein the husband and wife were joined, for an injury to the wife, the recovery was limited to damages for that injury alone, and did not embrace the injury to the husband; and under said section the husband, in such an action, may join thereto a claim in his own right, and recover for the loss of services of the wife, occasioned by the injury.

An attorney, who by an agreement with his client, is to receive a portion of whatever amount shall be recovered, is not a necessary party plaintiff, and need not be joined as such.

Railroad companies are held to a strict accountability for the safety of passengers. To enable them to properly discharge this duty, they have power to make reasonable rules and regulations respecting the time, mode, and place of entering cars; and these, *when known to the passenger*, he is bound to conform to, and he cannot violate them by pursuing another course and hold the company liable for damages thus occasioned, though the jury may believe that an ordinarily prudent man might have adopted the same course.

In the present case, which was an action by a husband and wife against a railway company, as common carriers, to recover damages for injuries to the wife, caused by defective steps to a platform to which the train had backed, and which was not the usual place for passengers to get on and off the cars, the jury should have been instructed to ascertain from the evidence whether the company had designated or set apart the platform in front of the depot as the place where it required all passengers to enter the cars: if so, and this was

known to the plaintiffs, and they, in disregard of such requirement, in advance of time, and without any justification, sought to enter the cars at another place, and in so doing, met with the injury, then the company would not be liable as common carriers.

But if, on the other hand, there was no such rule or regulation known to the plaintiffs, and they in good faith, and using reasonable care, were seeking to find and enter the cars, the company would be liable, as the plaintiffs would have a right to presume that the platform and its approaches were in a safe condition. The authorities sustaining the foregoing principles collated by DILLON, CH. J.

As a general rule, railroad companies are bound to keep in a safe condition all portions of their platforms and approaches thereto, to which the public do or would naturally resort, and all portions of their station grounds reasonably near to the platforms, where passengers or those who have purchased tickets with a view to take passage on their cars, would naturally or ordinarily be likely to go.

APPEAL FROM LINN DISTRICT COURT.

This was an action to recover damages for an injury received by Mrs. McDonald.

The petition avers that the defendants are common carriers of passengers; that, on the 3d day of January, 1867, at defendant's station, in Cedar Rapids, Mrs. McD. (plaintiff) purchased a ticket entitling her to be carried from Cedar Rapids, Iowa, to Fulton, Ill., and, that, "thereupon it became and was the duty of the defendant to use due and proper care that the plaintiff should be safely placed in said train, and so to construct and keep in good repair the platform around the said depot and the steps to the same, that plaintiff could safely go from the platform to the cars;" yet the defendant neglected its duty in this behalf, "so that the plaintiff, in going from the platform to the cars, fell through a step connected therewith, which defendant had negligently left in an unsafe condition, by reason of which fall she broke her ankle bone and was otherwise injured," etc. Answer:

1. In denial.
2. That the injury was caused by the plaintiff's own negligence.
3. That, before suit brought, "plaintiffs sold and conveyed to one E. Latham, one-half of the claim in suit, who still owns

the said half of said claim, so that the plaintiffs were not then, and are not now, the sole real parties in interest in the action."

On the trial it appeared in evidence that the plaintiffs procured tickets of the defendant, at its station in Cedar Rapids, and waited in the passenger room at the station until the arrival of the train on which they expected to take passage. The train arrived at 6.20 P. M., and left at 6.45 P. M. When the train arrived, the plaintiffs went to take their seats in the cars, and when about to step upon the train heard the announcement of "twenty minutes for supper." Mr. McDonald testified, that, about the time this announcement was made, "the train started and moved back beyond the platform, and I told my wife we had better go back into the room till such a time as the train should come forward. She said "no," she would rather sit down on the platform, or stand up there, as the room was so full of tobacco smoke that she could not stand it. It made her sick. I proposed to her that we should go back to the cars and get on, as it was cold. We started and walked on the platform toward the cars until we came to the west end of the platform, and in going down the steps, one of them being loose and out of place at one end, it gave way and came up between my legs, and threw us both on the track head foremost, down under the train."

The evidence showed that the accident happened when it was "dusk, or getting dark." There was evidence tending to show care in descending the steps where the accident happened.

Mrs. McDonald was 59 years old, and weighed about 200 pounds. There was evidence showing that the passenger depot, if not full, was crowded with foreign emigrants who were smoking. The plaintiff, Mr. McDonald, testified, "that it was thick with tobacco smoke, so much so that it was difficult for one to breathe, and my wife took more offense at it than I did." Mrs. McDonald testified: "that it was so smoky that it made me sick," and that this was the reason why she did not go back into the room, but went west along the platform to get aboard of the cars.

This testimony as to the smoky condition of the room was allowed to go to the jury against the defendant's objection.

The defendant produced evidence that the steps where plaintiffs fell were about 300 feet distant from the door of the passenger depot; and that the usual place for passengers to get on and off the cars was in front of the passenger depot, and the platform between it and the freight depot.

Passengers to and from the Dubuque and S. W. R. R. depot usually pass over these steps.

It was also shown by the defendant that it was customary when the train arrived, as in this instance, from the west, to run back so as to bring the baggage and express cars to a point opposite the freight depot, for the purpose of discharging and receiving baggage and express matter. This movement, on the evening on which the accident in question happened, placed the passenger coaches west of the west end of the platform, so that the nearest passenger car was about one car length beyond the steps at the west end of the platform.

It was while the cars were thus standing, that the plaintiffs, without waiting for them to be drawn up to the platform in front of the passenger depot, started for them, walking the whole length of the platform, and in descending the steps the injury for which this action is brought happened.

Defendant also produced evidence to the effect, "that there was plenty of room to get on and off the trains from the platform; and that there was no necessity for any one to go down these steps to get on. Before leaving, trains always draw up in front of the passenger depot, and stop to take on passengers. The accident happened fifteen or twenty minutes before the leaving time of the train. The steps are not intended or used for passengers to get on the trains.

The defendant asked the court to give the following instructions, viz:

"1. If the jury believe from the evidence, that the defendant, at the time of the alleged injury at the station at Cedar Rapids, was provided with a safe and suitable platform in front of, and adjacent to the passenger rooms of said station, so that passengers could safely and conveniently pass from said room to the trains, and that passenger trains stopped at said platform for the purpose of receiving passengers, and if said plaintiffs,

in attempting to get upon said train by a different and unusual way and at a different and unusual place, met with said accident, then the plaintiffs are not entitled to recover in this action.

"2. That if the plaintiff Margaret McDonald attempted to enter said train at a place not prepared or designed by the defendant for receiving passengers on trains, there being no paramount necessity for so doing, and in making such attempt she received the said injury, then her own fault contributed to the same, and the plaintiffs cannot recover.

"3. The liability of the defendant as a common carrier did not commence as to the plaintiffs until the train which they were to take was drawn up to the usual place for receiving passengers, unless they were directed by some authorized agent of defendant to go upon the train at another and different place, or before the train reached the usual place.

"4. If the jury believe from the evidence, that, before the commencement of this action, the plaintiffs agreed with Mr. E. Latham, that, as the consideration for his services in this action, he was to have one-half of all the money collected in said action, then the plaintiffs cannot recover in this action."

Each of these was *refused*, and the defendant excepted.

The court, after referring to the issues made by the pleadings, charged the jury as follows:

"3. If you find from the evidence that E. Latham, the plaintiffs' attorney, agreed to prosecute plaintiffs' claim for one-half he may recover, that does not make such an assignment as to make it necessary that he should be a party plaintiff.

"4. The principal question for you to determine is, by whose fault or negligence did the accident occur? If one of the steps was loose and not nailed down, by reason of which the accident happened, it is such a want of care as would render the defendant liable, unless you find that the accident happened, or was contributed to, by the want of ordinary care and prudence on the part of the plaintiff Margaret McDonald.

"5. It is for you to determine from the evidence whether the plaintiff Margaret McDonald used ordinary care and prudence in leaving the depot and going to the cars by the way and at the time she did, and by ordinary care is meant such

care and prudence as an ordinarily prudent person would exercise under like circumstances.

"6. If you find that an ordinarily prudent person would not have gone down the steps of the platform where the accident occurred, but would have waited until the passenger cars were opposite the passenger depot, then the defendant is not liable. And if you find that the plaintiffs went by a way which was not used or traveled over by passengers to enter the cars, and that a person of ordinary prudence would not have gone by that way, you may fairly infer that there was a want of ordinary care on her part. Passengers must exercise ordinary care in approaching and entering the cars.

"7. If, however, you find that the defendant backed its train up to the place where it stood when the accident happened; that persons could conveniently and safely approach the train where it then stood but for the defective step, and there was no rule or regulation of the company prohibiting persons from approaching the cars by that way, and that an ordinarily prudent person would have approached the train by that way, the defendant is liable if the accident occurred by reason of the defective step."

The defendant excepted to this charge.

The jury returned a verdict for the plaintiffs for \$2,000. A motion for a new trial was overruled, and judgment was entered against the defendant, from which it prosecutes the present appeal.

E. S. Bailey for the appellant.

E. Latham for the appellees.

The opinion of the court was delivered by

DILLON, C. J.—Appellant's various grounds for a reversal of the judgment, we notice in the order in which they are presented by counsel.

1. There was no error in allowing the plaintiffs to amend the petition so as to increase the amount claimed as damages.

2. There was no error in the action of the court in allowing witnesses to testify as to the condition of the passenger room with respect to tobacco smoke. The evidence was proper as

part of the transaction out of which the injury arose, and as showing why the plaintiffs did not remain in the passenger room, or return to it. The effect of this circumstance upon the rights of the parties was not stated to the jury. It would not justify the plaintiffs in violating a known rule of the company, if there was one, as to the particular place where passengers were required to enter their cars.

But I have no hesitation in saying, that, without any statute enacting it, there is a common law duty on these companies to provide reasonable accommodations at stations for the passengers who are invited and expected to travel on their roads. See *Caterham R. R. Co. v. London R. R. Co.*, 87 Eng. C. L. 410. If the station room is full, or if it is intolerably offensive, by reason of tobacco smoke, so that a passenger has good reason for not remaining there, while this will not justify him in violating reasonable rules and regulations of the company, which are known to him, respecting the place, mode and time of entering the cars, it will justify his endeavor to enter the cars at as early a period as possible, especially if it is dark and cold without, if in so doing he uses proper care and violates no rule or regulation of the company of which he has actual knowledge, or which, as a reasonable man, he would be bound to presume existed. He would not, of course, be justified, by the condition of the passenger room, in rashly endeavoring to board a train in motion, or the like; but if the train had arrived, was on the track, the car doors open, and if, as is frequently if not generally the case, passengers are allowed, or at least not forbidden, to enter the cars before they are drawn up in front of the station, we think a passenger may reasonably and properly make the attempt to reach and enter the cars, if he is not aware of any rule or regulation to the contrary; and if he receives an injury, in so doing (he using proper care), from the unsafe and dangerous condition of the platform or the steps in a place where passengers would naturally go, the company are liable therefor.

This subject, and some of the leading and recent decisions bearing upon it, will be alluded to in considering the instructions of the court to the jury.

3. There was evidence tending to show that the injuries to the wife were permanent in their nature, and likely to disable her during her life from rendering effectual service to her husband and family in the discharge of her household duties; and that in consequence a woman had been and was and probably would have to be employed to do the work she had been accustomed to perform.

Under these circumstances, there was no error in the admission of the Carlisle tables to show the expectancy of the life of the wife. It was shown, that, at the plaintiff's age, the expectancy of life was about fifteen years.

If the jury believed the injury was permanent, and that it would disable the plaintiff for life from doing labor, the length of time that she would probably live affords some data proper for the jury to consider in determining the amount of pecuniary damage occasioned by the injury.

At common law where the action was for a tortious injury to a married woman, the husband suing alone might recover for the expenses of a cure, for loss of service, and of the society of his wife. But in a suit in the name of the husband and wife, the cause of action was the injury to the wife, and the recovery was limited to damages for that injury, including, of course, the mental sufferings of the wife, and did not embrace the injury to the husband, who alone was liable to pay the medical attendant, and who alone was considered damnified by the loss of the services and society of his wife. *Fuller and Wife v. R. R. Co.*, 21 Conn. 557, 571; 2 Redf. on Railways 213, 3d ed. But our statute has changed the common law rule as to parties in such cases. Rev. 2775. This provides that "in an action brought by a man and his wife for an injury done to the wife, in respect of which she is necessarily joined as co-plaintiff, it shall be lawful for the husband to join thereto claims in his own right." See Rev. § 2771.

This was done in the present case. If there were doubt as to the propriety of the testimony as tending to show the extent of the injury to the wife, there can be none as to its propriety as tending to show the extent to which it would deprive the husband of the services of the wife.

4. The point that the agreement of the plaintiffs with Mr. Latham was champertous, does not appear to have been presented to the District Court. This agreement was set up in the answer as showing that the proper parties plaintiff had not joined in the action. The point made was, that Latham, by virtue of this agreement was a real party in interest, and ought to have been a party to the action.

The court held, that this was not such an assignment as would defeat the right to recover (see 4th instruction refused), or make it necessary that Latham should be a party plaintiff (see 3d paragraph of court's charge). And in this view the court was correct.

5. It is next insisted, that the court erred in refusing to instruct as prayed by the defendant, and also in the charge of its own to the jury. The view taken by the court below will appear from the instructions refused and given, which are set out in the statement of the case and need not be here repeated.

By recurring to the court's charge in chief, it will be seen that it made the defendant's liability turn upon the question whether the step, which caused the accident, was loose. The jury were told in the charge that, if one of the steps was loose and not nailed down, by reason of which the accident happened, the defendant is liable unless the plaintiffs' own want of care contributed to the injury; and such want of care does not exist if the jury find that an ordinarily prudent person would have gone down the steps of the platform, and would not have waited until the passenger cars were opposite the passenger depot. See paragraphs 4, 5, 6, and 7 of the charge.

These instructions assume, and necessarily imply, that the plaintiffs had the right to enter the cars when and where they attempted it, if an ordinarily prudent person would have pursued the course which the plaintiffs did, that is, if such persons would have gone down the steps and not have waited for the cars to be drawn up to the platform opposite the passenger depot.

The law on this subject is this:

Railroad companies are held to a strict rule of accountability for the safety of passengers. This is salutary and right.

To enable them properly to discharge this duty, they have the power to make reasonable rules and regulations. They may make such rules and regulations respecting *the time, mode, and place of entering cars*. *These, when known to the passenger*, whether they have ever been written or published, or are posted up or not, he is bound to conform to; and he cannot violate them, and pursue another course, and hold the company liable for damages thus occasioned, and which would have been avoided by conforming to the rules and regulations of the company, even though the jury may believe that an ordinarily prudent person would or might have adopted the same course.

A railroad company has a right to require all passengers about to enter their cars, to do so only when the cars are brought up to the platform for that purpose.

We cannot say that it is a rule of law that the mere existence of a platform in front of a depot is necessarily notice to the passenger that the train will be drawn up at that place to receive him, and that the company requires that he shall wait and enter the cars at that place, and is prohibited from entering them elsewhere.

In many places passengers are required or allowed by the companies to enter trains elsewhere than from the platform in front of the passenger station or depot. In many places, also, railroad companies fail to discharge a duty which they owe to the traveling public, by leaving them, without any assistance, to find out as best they can where the train is which they wish to take, how to reach, and when and where to enter it. Few persons traveling in strange places and on strange roads but have experienced the embarrassment arising from the failure of the company to have sign-boards, or officers or agents in attendance to give information of this character. See observations of MAULE, J., to the jury in *Martin v. R. R. Co.*, 81 Eng. C. L. on pp. 186, 187.

A company may require trains to be entered at a particular place, as, for instance, in front of the passenger depot. Often, however, there is no such requirement, and passengers are allowed, or at least not forbidden, to enter elsewhere.

Applying these general principles to the case in hand, we

are of opinion that the instructions asked by the defendant were faulty, in so far as they assume, as a matter of law, that it is the duty of a passenger, irrespective of any knowledge on his part of any rule or regulation, to wait, before entering the cars, until the train is drawn up in front of the passenger depot or platform.

If he knew that it was to be thus drawn up, and that passengers were expected and required to wait until this should be done before entering the cars, he could not, with such knowledge, be justified in seeking to enter the cars in an unusual place and at an unusual time, and hold the company for damages thus occasioned. Why? Because he is not in the line of his duty and in the exercise of his lawful rights at the time.

If the plaintiffs attempted to enter the cars at a place which they knew, or, from the nature of the circumstances surrounding them, ought to have known, was not prepared or designed for receiving passengers, and at which they knew, or from the circumstances ought to have known, the company did not allow passengers to enter, the company would not be liable as *common carriers* upon their contract—however it might be if they had not been declared against in this capacity—for an injury happening in the prosecution of such an attempt. Why? The answer is, that, in making such an attempt, the plaintiffs would not be in the line of their duty, or in the exercise of any right conferred upon them by their contract with the company.

Applying the general principles before expressed to the charge of the court, and it is obvious that the minds of the jury were not directed to the proper grounds on which the defendant's liability or non-liability would depend. The jury should have been directed to ascertain from the evidence whether the railroad company had designated or set apart the platform as the place where it required all passengers to enter the cars.

If so, and this was known to the plaintiffs, and they, in disregard of such requirement, and in advance of time, and without justification for so doing, sought to enter the cars at another place, and in so doing, the wife met with the injury for which

she sues, the company is not liable in this action as common carriers; and this is the capacity in which it is sued.

If, on the other hand, there was no rule or regulation known to the plaintiffs requiring them to enter at the platform, and they, in good faith, and using reasonable care, were seeking to find and enter the cars, the defendant would be liable for an injury caused by the defective platform or steps leading to it, since the plaintiffs, it being dark or nearly so, would have a right to presume that the platform and its approaches were in a safe condition.

We will not undertake to lay down any rule applicable to the ever varied circumstances of all cases which may arise. The gist of such an action as the present, if no known rule or regulation of the company, reasonable in its character, has been violated, is negligence; and what constitutes negligence so as to give an action, it is impossible to define in a rule which shall comprehend all cases.

The recent adjudications in the cases below cited, have been carefully examined, and they warrant us in laying down the general principles before expressed. Upon reason, that is, enlightened common sense, applied to the relation which railway companies sustain to the public, and applied to the nature of man and the mode in which the business of carrying passengers is practically and usually transacted, and upon the authority of decided cases, we are justified in laying down the following general rule as to the duty of such companies, to wit, that they are bound to keep in a safe condition all portions of their platforms and approaches thereto to which the public do or would naturally resort, and all portions of their station grounds reasonably near to the platforms, where passengers or those who have purchased tickets with a view to take passage on their cars, would naturally or ordinarily be likely to go.

Burgess v. R. R. Co., unfenced hole in station ground near depot building, 95 Eng. C. L. 923 (1858); *Martin v. R. R. Co.*, defective light in station grounds where passengers would naturally go, 81 id. 179 (1855); *Cornman v. R. R. Co.* 4 Hurlstone & Nor. 781 (1859); remarks of MARTIN, B., and WATSON, B., as to open place in platform; *Crafter v. R. R. Co.*, 12 Jur.

N. S. 272; S. C., 1 Law R. C. P. 300 (1866); *Longmore v. R. R. Co.*, 19 C. B., N. S. 183; S. C., 115 Eng. C. L. 183 (1865); *Sawyer v. R. R. Co.*, 27 Verm. 377; *Murch v. R. R. Co.*, 9 Foster, 9, 39, 40, remarks of BELL, J.; *Frost v. R. R. Co.*, 10 Allen 387 (1865).

For the error before mentioned in the instructions of the court, the judgment is reversed, and the cause remanded for a new trial in accordance with the rules and principles of law herein expressed.

We have studied the foregoing opinion with an extraordinary degree of attention and interest, because it affects a very difficult question in the law of passenger transportation, and one that is, in some sense, fundamental to the responsibility of the company, the security of passengers, in a somewhat wide field. If passengers can only claim immunity from injury in going, in the most direct path, to the passenger station, and from thence, in the most usual route, into the carriage, the responsibility of the company is considerably narrowed from what it has hitherto been generally understood to be.

There is unquestionably, some reason to rejoice that the extreme degree of care, which the law imposes upon passenger carriers, in regard to all the appliances of the transportation and its incidents, is to be restricted within such limits as will fairly and reasonably answer the necessities and conveniences of the business. If the passenger station and all its accessories are complete and perfect in all their detail, probably nothing more can be required of the company in that regard. If the passenger, for his own convenience, desires to be carried upon a freight train or an engine, upon an emergency, unless the one or the other, or

both modes of transportation are made habitual and constant with the company; that is, so long as the mode of transportation is exceptional with the company, the obligation, rights and duties of the respective parties must depend upon the contract, and the reasonable implications and expectations growing out of it. But in such a case the passenger for a single instance, and while entering upon the cars at a freight station even, at his own request, has the right to expect that the surroundings of the freight station shall be necessarily safe and reliable, to bear such weight and pressure as may be expected daily to be placed upon them. And if one, under those circumstances, had been injured precisely as this plaintiff was, there could be no question whatever of his right to recover.

But the present case is, in some respects, not so favorable for the plaintiffs as that would have been. If the plaintiffs had been permitted to take passage upon a freight train, and were approaching the goods station for that purpose, and the steps forming the approach or one of the approaches, had failed in the way it did here, no one could question the liability of the company for the injury. The steps were made by the company or their

agent, to be used in the ordinary mode, by all kinds of persons having occasion to use them for reaching or leaving the freight station. The plaintiffs in the case supposed, being rightfully in the use of them, at the time, would have the right to expect that they would prove safe for that use, and if they failed to do so it was the fault of company, and they would clearly be responsible.

And in the present case there seems to be but one question which can fairly admit of any doubt, and that is, how far the plaintiffs may fairly be regarded as rightfully in the use of the steps, at the time the injury occurred. This must of necessity be mainly a question of fact. Where the goods station and the passenger station are so nearly together, and connected by the same continuous platform, as in the present case, it is but natural to expect, that emergencies must occasionally occur, where passengers would be likely to pass these steps situated as they were, along the same platform. And if so, it would certainly be their duty to passengers, as well as to the consignor and consignee of goods, to keep the entire platform safe for all ordinary use, which passengers or freight might fairly be expected to demand and exercise for their reasonable convenience, and all persons in the lawful use of any portion of such platform had the right to demand this reasonable security in such use.

It is perhaps not reasonable to expect the approaches to a freight station to be constructed and guarded with the same degree of extreme caution which would be demanded at a passenger station. 1. Because there is not the same necessity, in the former case, as in the latter. The one is not expected to be used, at all hours of day and night,

by the same number of persons of all ages and conditions as the other must be. 2. The law imposes no such extreme degree of responsibility in the one case as in the other. We are not prepared to say, if the damage in the present case had occurred from the want of a baluster or railing at the steps, or from the want of warning where the offset was, or from any other defect, which might be properly required to be supplied at a passenger station, where all the passengers might be expected to go, but which would not at all be expected at a goods station, although liable to be occasionally used by passengers, that in such a case the plaintiffs could claim any indemnity against the company. But this injury occurred from no such defect or omission, but from one that was fatal to the very structure for all uses, which rendered it a mere trap or delusion, and equally unsafe for all uses.

If then the jury regarded the plaintiffs, under the instructions of the court, which seem to be unexceptionable upon this point as rightfully in the use of these steps and fairly to be regarded as rightfully in the place where the injury occurred, there can be no question whatever they were fully entitled to demand indemnity of the company. There are a considerable number of cases bearing more or less upon the question of the duty of the company to render stairways and passages reasonably safe, where falling in the direct and natural way of passengers. The English courts do not there seem inclined to any extreme degree of caution on the part of the company, such as the accident might reveal the convenience and security in having. *Crafter v. Metropolitan Railway*, Law Rep. 1 C. P. 300; S. C. 12 Jur. N. S. 272; *Longmore v. The Great Western Rail-*

way, 19 C. B., N. S. 183; *Rigg v. Sheffield & L. Railway*, 12 Jur. N. S. 524.

The principal case seems to have been made to turn to some extent upon the regulations of the company in regard to the time and mode of passengers taking the cars. We should regard any such regulations, unless in some way made known to persons purchasing tickets, or reasonably advertised to all, by the arrangements of the station-house and the platform, so that all passengers would be likely to notice them, as not being of obligation upon passengers, who in point of fact had no knowledge of them. Railway companies who desire passengers not to leave the station-house and waiting rooms until the departure of the trains, must take the ordinary precautions to prevent it. That is universal upon the continent of Europe and to some extent in this country. And it is the only effectual mode of securing the observance of any such regulation. If passengers see other passengers passing out at pleasure, upon and along the platform connected with the station, they will naturally, and by consequence, rightfully understand, that it is permitted by the company. Any regulations, therefore, forbidding the passengers to pass out of the station before the arrival and departure of the cars, when every moment its violation and disregard is permitted, must be regarded as waived and abandoned. And so in regard to the passengers being permitted to traverse the entire range of a continuous platform like the one here, having an offset and steps, it must depend very much upon the apparent openness of the passage and its proximity to the passenger train, and the occasions one might have to adopt that course.

It is not very uncommon for passen-

gers to be allowed to enter the carriages, at any time suiting their own convenience, and when that is habitually permitted, the passenger is certainly not in fault for attempting to do what others are constantly permitted to do, without rebuke or remonstrance. Every time any such thing is suffered it is an open declaration of the company, that it is regular and right to do so; and they cannot, afterwards, when some accident occurs, in consequence of the continuance of the same practice, shield themselves on the ground that the course pursued was irregular, or contrary to their regulations. The most satisfactory, and the only conclusive evidence of the regulations of a corporation, as of the principles of a man, is that which is to be fairly inferred from his or its daily life and conduct.

But when a passenger assumes to enter the cars, at an exceptional place or in an exceptional manner, he must be able to notify the triers, that circumstances existed, without his fault, which fairly justified him in attempting such an exceptional course. And of this the jury must be regarded as the only judges, where there is any evidence tending to prove a justification. There seems to have been in the present case, good reason for the departure from the usual course. An uninhabitable waiting room is the same as none at all. And if railway passenger carriers expect passengers to remain within the waiting rooms until the carriages are drawn up to the platform, they should first render them habitable, and then enforce the regulation upon all. And if they allow passengers to wander at will upon these platforms, connected with these station-houses, they must construct them in such a manner as to be ordinarily safe for that use. Or

if in any portion they are not so constructed, or for any reason, it is not expected passengers will use them throughout their full extent, in all such rightful emergency as may seem to demand such use, they should take some positive and sensible means of securing their exclusion from the prohibited portion. Passengers will naturally take any open passage leading to the place which they design or desire to reach. And if any such passages remain open about passenger stations, which passengers, on any emergency, not produced by their own fault, will be likely to take, the company should be held responsible for the consequences until they take the precaution

to fence off such passage. This is upon the same principle, that one who has an open well or any other dangerous place about his premises, is bound to fence it off, or he will be held responsible for any injury occurring to any person rightfully there. *Burnes v. Wade*, 2 Car. & K. 661. This general subject was largely discussed in a recent case in the House of Lords. *The Mersey Docks and Harbor Board v. Ruhlallow*, Law Rep. 1 Ho. Lds. 93; S. C. 12 Jur. N. S. 571. So also as bearing upon the same question, *Metcalf v. Hatherington*, 5 H. & N. 719; *Coe v. Wise*, 10 Jur. N. S. 1019.

I. F. R.

Supreme Court of the United States.

L. P. WOODRUFF *et al* v. JOHN PARHAM.

The provision of the National Constitution, that no state shall, without the consent of Congress, levy any imposts or duties on imports or exports, extends alone to articles brought into a state from a *foreign* country, and has no application to articles brought from one state into another; hence this provision does not prohibit a state from taxing articles brought into it for sale from a sister state, even though when taxed they are in the original or unbroken package.

A state law authorizing a tax on *all* sales of merchandise, whether the goods sold be the produce of that state or some other, and not discriminating against the products of sister states or their citizens, is valid, even though the articles were sold at wholesale in the original and unbroken packages.

Brown v. Maryland, 12 Wheat. 419, and other cases commented on and distinguished from the present case by MILLER, J.

In error to the Supreme Court of the State of Alabama.

The opinion of the Court was delivered by

MILLER, J.—The charter of Mobile authorizes that city to impose a tax for municipal purposes on real and personal estate, auction sales and sales of merchandise, capital employed in business, and income within the city. The plaintiff in error